

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

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In the Matter of

Geographic Partitioning and Spectrum
Disaggregation by Commercial Mobile
Radio Services Licensees

WT Docket No. 96-148

Implementation of Section 251 of the
Communications Act --
Elimination of Market Barriers

GN Docket No. 96-113

**OPPOSITION OF AT&T WIRELESS SERVICES, INC.
TO THE PETITION FOR RECONSIDERATION
OF THE NATIONAL TELEPHONE COOPERATIVE ASSOCIATION
AND THE INDEPENDENT ALLIANCE**

AT&T Wireless Services, Inc. ("AT&T"), by its attorneys, hereby opposes the Petition for Reconsideration submitted by the National Telephone Cooperative Alliance ("NTCA") and the Independent Alliance^{1/} regarding the Commission's order in the above-captioned proceeding.^{2/} In its petition, the NTCA argues that, by eliminating the exclusive nature of its members' right to purchase partitioned licenses, the Commission violated the congressional mandate to provide an opportunity for rural telephone companies to participate in the provision of personal communications services ("PCS").^{3/} NTCA has overstated both

^{1/} Petition for Reconsideration of the National Telephone Cooperative Association and the Independent Alliance (filed February 5, 1997) ("NTCA Petition").

^{2/} In the Matter of Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees; Implementation of Section 251 of the Communications Act -- Elimination of Market Barriers, WT Docket No. 96-148, GN Docket No. 96-113, Report and Order and Further Notice of Proposed Rulemaking, FCC 96-474 (rel. Dec. 20, 1996) ("Partitioning and Disaggregation Order").

^{3/} NTCA Petition at 3 (citing 47 U.S.C. § 309(j)(4)(D)).

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the nature of Congress's directive to the Commission as well as the effect of its decision to allow other entities to acquire spectrum through partitioning. The Commission should deny NTCA's petition.

I. The Commission Has Provided Rural Telephone Companies With Ample Opportunities to Participate in the Provision of PCS

As part of the Budget Act of 1993, Congress authorized the Commission to use competitive bidding to award spectrum licenses.^{4/} Congress also required the Commission to ensure that rural telephone companies and other designated entities would be given the opportunity to participate in the provision of spectrum-based services.^{5/} Although the Commission's decision to allow rural telephone companies to obtain post-auction partitioned licenses was one means of satisfying this congressional directive,^{6/} as described below, it was not the only step the Commission took to ensure that rural telephone companies would have an opportunity to participate in the provision of PCS.

First, in the Broadband PCS Reconsideration Order, the Commission increased the cellular attribution threshold for rural telephone companies with non-controlling cellular interests in their areas in order to increase the number of rural telephone companies that

^{4/} Omnibus Budget Reconciliation Act of 1993, Pub.L. 103-66, Title VI, § 6002, 107 Stat. 312, 387-88 ("Budget Act"), codified at 47 U.S.C. § 309(j).

^{5/} Id. at § 309(j)(4)(D).

^{6/} Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5597-99 (1994) ("Competitive Bidding Fifth Report and Order").

would be eligible to hold PCS licenses.^{7/} The Commission also implemented eligibility criteria for the C and F frequency blocks that it expected would allow most rural telephone companies to bid for these licenses without competition from large telephone companies.^{8/} The Commission anticipated that "virtually all rural telephone companies" would benefit from the installment payment plans adopted for these "entrepreneurs" blocks.^{9/} Finally, in addition to allowing rural telephone companies to acquire partitioned PCS licenses from other licensees both before and after the auction, rural telephone companies were permitted to create bidding consortia and, pursuant to pre-auction agreements, to partition amongst themselves.^{10/} These measures were more than adequate to ensure that rural telephone companies would have an opportunity to participate in the provision of PCS. NTCA is simply wrong when it claims that by eliminating the exclusive aspect of one of these measures -- post-auction partitioning -- the Commission has "abandoned its implementation of a direct Congressional mandate."^{11/}

II. The Commission's Action Will Not Unfairly Affect Rural Telephone Companies

There is no basis for NTCA's claim that rural telephone companies will be unfairly affected by the Commission's decision to allow other entities to acquire spectrum through

^{7/} In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Memorandum Opinion and Order, FCC 94-144 at ¶ 125 (rel. June 13, 1994).

^{8/} Competitive Bidding Fifth Report and Order at ¶¶ 19, 153.

^{9/} Id. at ¶ 153.

^{10/} Id. at ¶ 151.

^{11/} NTCA Petition at 2.

partitioning because rural telephone companies gave up their auction opportunities in favor of the exclusive right to partition. Rural telephone companies have had ample opportunities to participate in the PCS auctions and the Commission has done its best to encourage such participation, as described above. Indeed, many of the BTAs available in the recently concluded D, E, and F block auction were appropriately sized for rural carriers and numerous rural entities bid in the auction and won licenses. The fact that rural telephone companies constituted more than 25 percent of the winners in that auction entirely belies NTCA's claims of harm.^{12/}

In addition, there is no evidence that expanding the pool of potential partitionees will prevent rural telephone companies from purchasing their desired licenses post-auction in order to participate in the provision of PCS. To the extent that rural telephone companies have the advantage of existing facilities and an existing customer base, they may well be the only willing buyers in many areas. While the added competition might, in some cases, preclude rural carriers from getting a "deal," Congress did not mandate that the Commission provide rural telephone companies with such advantages. Congress merely directed the Commission to ensure that rural telephone companies had an opportunity to participate in the provision of spectrum-based services, which, as set forth above, the Commission has done.

^{12/} Thirty-two of the 125 D-F block winners are rural telephone companies.

CONCLUSION

The Commission's decision to broaden the partitioning rules will increase competition in the PCS marketplace, encourage efficient spectrum use, and speed service to unserved and underserved areas. NTCA has provided no reason for the Commission to reconsider that decision. The Commission should accordingly deny NTCA's petition for reconsideration.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

Cathleen A. Massey (mm)

Cathleen A. Massey
Vice President - External Affairs
Douglas I. Brandon
Vice President - External Affairs
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036
202/223-9222

Howard J. Symons
Sara F. Seidman
Michelle M. Mundt
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
701 Pennsylvania Avenue N.W.
Suite 900
Washington, D.C. 20004
202/434-7300

Of Counsel

April 2, 1997

CERTIFICATE OF SERVICE

I, Michelle Mundt, hereby certify that on this 2nd day of April, 1997, I caused a copy of the foregoing Opposition to Petition for Reconsideration of AT&T Wireless Services, Inc. to be served upon the following by messenger:

Rosalind Allen*
Deputy Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Rudy Baca*
Senior Legal Advisor
Office of Commissioner Quello
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, D.C. 20554

David Furth*
Chief
Commercial Wireless Division
Federal Communications Commission
Room 7002
2025 M Street, N.W.
Washington, D.C. 20554

Shaun A. Maher*
Legal Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
2025 M Street, N.W., Room 7002
Washington, D.C. 20554

Jackie Chorney*
Senior Legal Advisor
Office of Chairman Hundt
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

David Siddall*
Office of Commissioner Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

ITS*
2100 M Street, N.W., Room 140
Washington, D.C. 20554

Suzanne Toller*
Federal Communications Commission
Legal Advisor
Office of Commissioner Chong
Room 844
1919 M Street, N.W.
Washington, D.C. 20554

James Carr*
Office of General Counsel
Federal Communications Commission
Room 602
1919 M Street, N.W.
Washington, D.C. 20554

David Cosson
L. Marie Guillory
National Telephone Cooperative Association
2626 Pennsylvania Avenue, NW
Washington, D.C. 20037

Jonathan Chambers
Sprint Spectrum L.P.
1801 K Street, N.W.
Suite M112
Washington, D.C. 20006

Stephen G. Kraskin
Sylvia Lesse
(Counsel for the Independent Alliance)
Kraskin & Lesse
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Gregory Whiteaker
(Counsel for the Rural Telecommunications)
Group
Bennet & Bennet, PLLC
1019 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036


Michelle Mundt

*By Hand
F1/64994.1